Filed 12/15/16 In re S.M. CA1/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re S.M., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. S.M., Defendant and Appellant.	A147762 (San Francisco City and County Super. Ct. No. JW 14-6084 Stanislaus County Super. Ct. No. 513751)

S.M. appeals from juvenile court orders declaring her a ward of the court and committing her to an out-of-home placement. She challenges a condition of probation requiring her to submit to searches of electronic devices in her possession and control and additionally argues that the matter must be remanded for the juvenile court to specify her maximum term of confinement. Respondent agrees with the latter point. We conclude that the probation condition as presently framed must be stricken. We will remand for the trial court to specify the maximum term of confinement and, if it so chooses, permit further development of the record as necessary to determine whether the electronic search condition should be re-imposed and, if so, define its parameters. In all other respects, the orders will be affirmed.

STATEMENT OF THE CASE

The original petition in this case, filed in San Francisco County Juvenile Court on April 3, 2014, alleged two felonies, vandalism (§ 594, subd. (b)(1)) and assault (§ 245, subd. (a)(4)), and two misdemeanors, both counts of battery on a peace officer (Pen. Code, § 243, subd. (b)), arising out of an incident on December 31, 2013. Appellant failed to appear for the jurisdiction hearing and a bench warrant issued on May 28, 2014. On October 3, 2014, appellant admitted a misdemeanor vandalism violation (§ 594, subd. (b)(2)(A)), the other counts were dismissed, and the matter was transferred to Stanislaus County, indicated to be appellant's county of residence, for disposition.[1] A bench warrant issued after appellant failed to appear for hearings in Stanislaus County on October 27 and November 17, 2014; appellant surrendered on the warrant on December 2, 2014, and she was released on house arrest on December 4, 2014.

On January 15, 2015, appellant was arrested for violating the terms of her house arrest after an incident in which she reportedly brandished a taser on the school bus. When taken into custody, she was found to be in possession of a "small amount" of marijuana; at juvenile hall, she denied being in possession of "anything else" but was found to have a stun gun in her bra. A petition filed in Stanislaus County on January 20, 2015, alleged one count of felony possession of a stun gun in jail (§ 4574, subd. (a)) and one count of misdemeanor possession of a stun gun (§ 22610). Appellant admitted the misdemeanor count on February 2, 2015, and both this case and the original San Francisco one were transferred to San Francisco for disposition. Appellant was declared a ward of the San Francisco County Juvenile Court (Welf. & Inst. Code, § 602) on April 15, 2015, after the court sustained allegations that she committed two misdemeanors,

[1] According to a March 2015 probation report, appellant stated that she lived in San Francisco with both parents until she was 11 or 12 years old and later, in eighth grade, moved to Modesto with her mother. The address listed for appellant's mother in some of the documents in the record is in Modesto and in other documents is the same as the father's San Francisco address. At the jurisdictional hearing, appellant's mother told the court that she and appellant lived with appellant's father at the San Francisco address.

vandalism (Pen. Code, § 594, subd. (b)(2)(A))[2] and possession or use of a stun gun (§ 22610). She was placed on probation, to reside in the home of her father.

On August 7, 2015, the probation officer filed a notice of motion to revoke probation (Welf. & Inst. Code, § 777, subd. (a)), alleging that appellant's whereabouts were unknown and she had failed to comply with her 6:00 p.m. curfew or required office visits with the probation officer. The officer declared that a home visit revealed neither appellant nor her father lived at the address provided and phone numbers provided for the minor and the father were not working. A bench warrant issued on October 1, 2015, after appellant failed to appear for a hearing.

On November 13, 2015, the present petition was filed in Stanislaus County, alleging two felonies, robbery (§ 211) and use of pepper spray (§ 22810, subd. (g)(1)), and one misdemeanor, giving false identification to a peace officer (§ 148.9, subd. (a)). These allegations were found true on December 21, 2015, after a contested jurisdictional hearing, and the matter was transferred to San Francisco. Following a contested dispositional hearing on January 19, 2016, the court redeclared wardship and ordered out of home placement. On January 28, 2016, the court granted appellant's oral motion to dismiss the Welfare and Institutions Code section 777 petition. Appellant was placed at Bella Vida on February 18, 2016.

Appellant filed a timely notice of appeal on March 11, 2016.

STATEMENT OF FACTS

About 10:00 p.m. on November 11, 2015, Emerald Crum was walking to her car after leaving work at the Pink store in the Vintage Faire Mall when a girl she identified as appellant approached her and said, " 'You dropped something.' " Crum looked at the ground and said, " 'Oh, no, I didn't.' " She saw appellant taking out pepper spray, which initially malfunctioned, and swung her arms to try to knock it out of appellant's hand, then appellant pepper-sprayed Crum's face and tried to take the bag Crum was carrying, a small cardboard bag containing Crum's protein shake in a blender bottle and her

[2] Further statutory references will be to the Penal Code unless otherwise specified.

identification card, credit card, and lip gloss. A girl who was with appellant jumped on Crum's back, punching her, and Crum elbowed her in the face and the girl fell off and ran. Appellant had already begun to run away with some of Crum's things. Crum picked up her credit card from the ground and ran after the girl who had been on her back. She did not know either of her assailants and had not seen either of them earlier in the evening other than having noticed them in the parking lot, more than 20 feet away, as she left the mall. As appellant was running away with Crum's things after the incident, Crum called her a "cunt"; Crum had not called appellant that before the pepper spraying. Crum testified that she thought the pepper spray can was pink and that she did not have any pepper spray in her possession at the time of the incident.
The police later gave Crum back her shake but not her identification card or lip gloss.

Shapnam Nawabi, leaving the mall, saw two girls hanging around in the parking lot and then, as she walked toward her ride, saw the girls punch and pepper spray Crum and take her bag. Crum yelled that she was being robbed, punched back and elbowed the girl who had jumped her from behind. Yasamand Nawabi, arriving in her car to pick up her sister, saw two girls approach a third and at first thought they were arguing about "high school stuff," then realized the third was screaming that she was being robbed as the first two "tag team[ed]" her from different sides. She pulled her car up and the sisters drove Crum to the Apple store, where there was a police officer.

Police Officers Joaquin Flores and Greg Booza were dispatched to the mall for a reported robbery, and detained appellant based on a description given by the victim. Appellant falsely identified herself to the officer as Mayliah Knight, waived her Miranda rights and gave a statement about the incident. Appellant said that as she was leaving the mall, she was "shoulder checked" by the victim, words were exchanged, the victim tried to punch her and appellant fought back and pepper sprayed the victim. Appellant was arrested, and the police recovered a blender bottle she had been holding in her hand. Another individual was also arrested as a result of the police investigation, and a can of pink pepper spray was recovered.

Appellant testified at the jurisdiction hearing that earlier in the evening on November 11, while shopping in the Pink store, she had accidentally bumped Crum while bending down to pick up something she had dropped. Crum said, " 'Excuse you[,]' " and appellant said, " 'Okay. My bad.' " Later, when appellant and her friend J.S. were leaving the mall, Crum saw them and called appellant a "cunt." Appellant turned around and Crum swung at her, then appellant pulled out her pepper spray and sprayed Crum. Crum also swung at J.S. Crum picked up her items that had fallen on the ground during the interaction, and appellant picked up a bottle that she assumed belonged to J.S. This was the only item appellant picked up. She walked away without seeing where J.S. had gone, then met her at the end of the mall. Appellant testified that they were stopped by the police as they were going to cross the street to a gas station where appellant's aunt said she would pick them up, although she could not identify the street to be crossed or gas station where they were supposed to meet. Appellant made up the name she gave to the police because "they already accused me of strong-arm robbery so I felt there was no need to give them my actual name."

DISCUSSION

I.

Among the conditions of probation imposed at disposition, the court ordered, "any electronic or digital device in your possession or under your custody or control may be searched at any time of the day or night, by any peace or probation officer." Appellant contends this condition is invalid under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*) because it relates to conduct that is not in itself criminal, has no relationship to the underlying offenses and is not reasonably related to appellant's future criminality. She additionally argues the condition is unconstitutionally overbroad.

Conditions of probation are reviewed for abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) "Generally, '[a] condition of probation will not be held invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. . . ." [Citation.]' (*Lent*,

supra, 15 Cal.3d at p. 486.) This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. (*Id.* at p. 486, fn. 1; see also *People v. Balestra* (1999) 76 Cal.App.4th 57, 68–69.) As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality. (See [*People v.*] *Carbajal* [(1995)] 10 Cal.4th [1114,] 1121.)" (*Olguin*, at pp. 379-380.)

"The permissible scope of discretion in formulating terms of juvenile probation is even greater than that allowed for adults." (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910 (*Victor L.*).) " 'The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents' (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 (*Antonio R.*)), thereby occupying a 'unique role . . . in caring for the minor's well-being.' (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500.) In keeping with this role, section 730, subdivision (b), provides that the court may impose 'any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.' " (*Victor L.*, at pp. 909-910.)

" '[E]ven where there is an invasion of protected freedoms "the power of the state to control the conduct of children reaches beyond the scope of its authority over adults. . . ." ' (*Ginsberg v. New York* (1968) 390 U.S. 629, 638.) This is because juveniles are deemed to be 'more in need of guidance and supervision than adults, and because a minor's constitutional rights are more circumscribed.' (*Antonio R.*, *supra*, 78 Cal.App.4th at p. 941.) Thus, ' " 'a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court. ' " ' (*In re Sheena K.* [(2007)] 40 Cal.4th 875, 889 (*Sheena K.*); see also *In re R.V.* (2009) 171 Cal.App.4th 239, 247; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242-1243 [rule derives from court's role as *parens patriae*].)" (*Victor L.*, *supra*, 182 Cal.App.4th at p. 910.)

Still, every probation condition must be made to fit the circumstances and the minor. (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.) Unlike an adult probationer, a juvenile " ' "cannot refuse probation [citations] and therefore is in no position to refuse a particular condition of probation." [Citation.] Courts have recognized that a "minor cannot be made subject to an automatic search condition; instead, such condition must be tailored to fit the circumstances of the case and the minor." ' " (*In re J.B.* (2015) 242 Cal.App.4th 749, 756 (*J.B.*), quoting *In re Erica R.* (2015) 240 Cal.App.4th 907, 914 (*Eric R.*).)

Appellant did not object to the electronic search condition in the juvenile court. Failure to object to the reasonableness of a probation condition results in forfeiture of the claim. (*People v. Rodriguez* (2013) 222 Cal.App.4th 578, 585.) Failure to object on the constitutional grounds of vagueness and overbreadth may be raised for the first time on appeal if they present " ' "pure questions of law that can be resolved without reference to the particular sentencing record developed in the trial court[,]" ' " but will forfeit the issues where this is not the case. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889, quoting *In re Justin S.* (2001) 93 Cal.App.4th 811, 815, fn. 2.) Consequently, in order to bring the issue before us, appellant argues that she received ineffective assistance of counsel. She argues there could be no conceivable explanation for her attorney's failure to object, since this court had held an electronic search condition invalid under *Lent* several months before the condition was imposed in the present case. (*Erica R.*, *supra*, 240 Cal.App.4th 907.)

We find it unnecessary to determine the merits of the claimed ineffective assistance of counsel. Despite the general rules just stated, "an appellate court may review a forfeited claim—and '[w]hether or not it should do so is entrusted to its discretion.' " (*Sheena K.*, *supra*, 40 Cal.4th at p. 887, fn. 7, quoting *People v. Williams* (1998) 17 Cal.4th 148, 162, fn. 6.) Because of the immense amount of personal information that can be stored on electronic devices, and even greater amounts to be found on internet sites the devices can access, electronic search conditions carry obvious implications for constitutionally protected privacy interests. (See generally *Riley v.*

California (2014) ___ U.S. ___ [134 S.Ct. 2473, 2494–2495] (*Riley*).) Such conditions are being imposed upon juvenile offenders frequently and, as we will discuss, the decided cases have reached conflicting conclusions about their reasonableness. The issue is currently pending supreme court review.[3] Because of the significant privacy interests at stake, we find it appropriate to exercise our discretion to consider appellant's claims.

In *Erica R., supra*, 240 Cal.App.4th at page 910, we considered a probation condition requiring a juvenile who had admitted misdemeanor possession of ecstasy to submit to search of her "electronics" and provide her passwords to her probation officer. The offense did not involve use of any electronic device, and the minor's attorney represented that the minor did not have a cell phone. (*Ibid.*) The juvenile court believed the condition was reasonably related to future criminality because it provided a way to keep track of the minor's drug usage, explaining that in its experience, " 'many juveniles, many minors who are involved in drugs tend to post information about themselves and drug usage.' " (*Id.* at pp. 910, 913.) After finding the first two *Lent* factors met because the condition had no relationship to the minor's offense and typical use of electronic devices and social media is not criminal, we rejected the juvenile court's justification: " '[B]ecause there is nothing in [Erica's] past or current offenses or [her] personal history that demonstrates a predisposition' to utilize electronic devices or social media in connection with criminal activity, 'there is no reason to believe the current restriction will serve the rehabilitative function of precluding [Erica] from any future criminal acts.' " (*Erica R.*, at pp. 912-913, quoting *In re D.G.* (2010) 187 Cal.App.4th 47, 53.)

We contrasted the situation in *Erica R.* with *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, in which the adult defendant was convicted of making criminal threats

[3] *In re Ricardo P.* (2015) 241 Cal.App.4th 676, 681, review granted February 17, 2016, S230923; *In re Patrick F.* (2015) 242 Cal.App.4th 104, 108, review granted February 17, 2016, S231428; *In re Alejandro R.* (2015) 243 Cal.App.4th 556, 561, review granted March 9, 2016, S233340; *In re Mark C.* (2016) 244 Cal.App.4th 520, review granted April 13, 2016, S232849; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted May 25, 2016, S233932; *In re George F.* (2016) 248 Cal.App.4th 734, review granted September 14, 2016, S236397; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted October 12, 2016, S145399.

to a police officer. There, the condition requiring the defendant to submit his electronic devices to search, with passwords to the devices and social media accounts, was reasonably related to the risk of future criminality because the threats had included references to the defendant's gang membership, he had promoted his gang through his social media account, and his gang membership was related to future criminality in that his " 'association with his gang gave him the bravado to threaten and resist armed police officers.' " (*Erica R.*, *supra*, 240 Cal.App.4th at pp. 914–915, quoting *Ebertowski*, at pp. 1173, 1176–1177.)

Division Three of this court reached the same result as *Erica R.* in the case of a minor who admitted committing a petty theft. (*J.B.*, *supra*, 242 Cal.App.4th 749.) The electronic search was imposed by the same juvenile court judge as in *Erica R.*, for the same reason. (*J.B.*, at p. 752.) The *J.B.* court found there was "no showing of any connection between the minor's use of electronic devices and his past or potential future criminal activity" and therefore no reason to believe the condition would serve the purpose of preventing the minor from committing future criminal acts. (*Id.* at pp. 756–757.)

J.B. disagreed with the reasoning of two of the cases currently pending Supreme Court review, both of which also involved electronics search conditions imposed by the same juvenile court judge as a means to supervise minors for whom there was some indication of illegal drug use in the record. (*J.B.*, *supra*, 242 Cal.App.4th at p. 757, discussing *In re Ricardo P.*, *supra*, 241 Cal.App.4th 676, and *In re Patrick F.*, *supra*, 242 Cal.App.4th 104.) Those cases were based on *Olguin*, *supra*, 45 Cal.4th at pages 380–381, which upheld a condition of probation that had no relationship to the defendant's offense but would "enable[ ] a probation officer to supervise his or her charges effectively." The condition in *Olguin* required the adult defendant to keep his probation officer informed of the presence of pets at his residence. The court explained that this requirement would facilitate unannounced visits to and searches of a probationer's residence, which are part of "proper supervision" of a probationer, by enabling the probation officer to take precautions against possible threats posed by an animal, as well

as avoid having a pet create an opportunity for destruction of evidence of unlawful activity by alerting the probationer to the officer's approach. (*Id.* at p. 382.) " 'By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers.' (*People v. Robles* (2000) 23 Cal.4th 789, 795.) A condition of probation that enables a probation officer to supervise his or her charges effectively is, therefore, 'reasonably related to future criminality.' " (*Olguin*, at pp. 380–381.)

J.B. questioned whether *Olguin* "justifies a probation condition that facilitates general supervision of a ward's activities if the condition requires or forbids noncriminal conduct bearing no relation to the minor's offense that is not reasonably related to potential future criminality as demonstrated by the minor's history and prior misconduct." (*J.B.*, *supra*, 242 Cal.App.4th at p. 757.) The court concluded that "such a broad condition cannot be squared with the limitations imposed by *Lent*, *supra*, 15 Cal.3d at page 486, and in some cases may exceed constitutional limitations. (See [*Sheena K.*, *supra*,] 40 Cal.4th [at p.] 890.)" (*J.B.*, at p. 757.) We agree. " '[n]ot every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable.' " (*Erica R.*, *supra*, 240 Cal.App.4th at p. 913, quoting *People v. Brandao* (2012) 210 Cal.App.4th 568, 574.) "The fact that a search condition would facilitate general oversight of the individual's activities is insufficient to justify an open-ended search condition permitting review of all information contained or accessible on the minor's smart phone or other electronic devices." (*J.B.*, at p. 758.)

Additionally, the *Olguin* court made a point of explaining that the particular condition at issue—requiring a probationer to keep the probation officer informed of the presence of pets—was both a reasonable means of facilitating the general search condition and reasonable in that it did not impose an undue burden on the probationer. (*Olguin, supra*, 45 Cal.4th at p. 382.) We do not read *Olguin* as holding that *every* condition that could enable a probation officer to supervise a minor more effectively is

necessarily "reasonably related to future criminality." (*Id.* at p. 381.)[4] An electronic search condition that requires a minor to provide access to the wide range of data potentially stored on electronic devices imposes a burden vastly different in nature and extent from what was at issue in *Olguin*. Unlike the condition in *Olguin*, which only facilitated a residence search condition the defendant did not challenge, the condition here adds significantly to the scope of the areas subject to warrantless search. As the court observed in *Riley, supra,* 134 S.Ct. at page 2491, "a cell phone search would typically expose to the government far more than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is." As with adult probationers, a search condition diminishes but does not altogether foreclose a juvenile probationer's reasonable expectation of privacy. (*In re Jaime P*. (2006) 40 Cal.4th 128, 136.)

We recognized in *Erica R., supra*, 240 Cal.App.4th at page 914, that "there can be cases where, based on a defendant's history and circumstances, an electronic search condition bears a reasonable connection to the risk of future criminality." *People v. Ebertowski, supra*, 228 Cal.App.4th 1170, described above, is one such case, as the defendant's use of his social media account directly related to his criminal offense. *In re Malik J.* (2015) 240 Cal.App.4th 896, held that an electronic search condition requiring a minor to provide passwords to devices in his custody and control was reasonably related to his offenses, which included a robbery involving an iPhone, as the condition would enable officers to determine the ownership of electronic devices found in his possession. (*Id.* at p. 902.) *In re P.O., supra,* 246 Cal.App.4th 288 found an electronic search condition, including providing passwords, valid under *Lent* despite there being no connection to use of electronic devices in the underlying offense (charge of unlawful

[4] We are aware, of course, that our colleagues in Division One disagree with this point. *In re P.O.* (2016) 246 Cal.App.4th 288, 295-296, read *Olguin, supra,* 45 Cal.4th 375, as requiring only that the burden imposed by a probation condition on the probationer be reasonable, not that the condition itself be reasonable.

possession of a controlled substance, admission to reduced count of public intoxication). (*In re P.O.,* at p. 295.) The court found the condition reasonably related to enabling effective supervision of the minor's compliance with other probation conditions, accepting the trial court's reasoning that minors "are apt to use electronic devices to show off their drug use or ability to procure drugs." (*Id.* at pp. 293, 295.)

Even where the underlying offense is not directly tied to use of electronic devices, a minor's history and overall circumstances may be such that an electronic search condition is reasonably related to future criminality. In a particular case, it might be reasonable for the probation department to search a minor's electronic devices and/or activity on the internet to monitor compliance with conditions such as refraining from use of drugs (as in *In re P.O., supra,* 246 Cal.App.4th 288) or avoiding contact with specified individuals or going to prohibited locations. But if there is nothing in a minor's current offenses, criminal history or personal circumstances demonstrating a predisposition to use electronic devices in connection with criminal activity, there is no basis for concluding an electronic search condition " 'will serve the rehabilitative function of precluding [the minor] from any future criminal acts.' " (*Erica R., supra,* 240 Cal.App.4th at p. 913, quoting *In re D.G., supra,* 187 Cal.App.4th at p. 53.) The condition must be reasonably related to future criminality in that it would be a reasonable means of deterring future crime by this particular minor, based on all the circumstances of this particular case. A condition imposed automatically for all minors is not tailored to the needs and circumstances of the specific minor before the court.

In the present case, there was nothing in the underlying offense related to use of electronic devices. Nor was there anything in the history reflected in the probation reports suggesting past offenses related to electronic devices or use of electronic devices for any unlawful purpose or to facilitate or promote unlawful conduct. The only information in the record as to whether appellant owns or uses a cell phone or other electronic devices is one reference by the probation officer to a phone number for appellant not working and appellant's testimony at the jurisdiction hearing that she did not have a phone at the time of the incident, followed by a comment, made after the court

sustained the petition, that is ambiguous as to whether appellant was saying she *did* have a phone or she should be viewed as having had one because the friend she was with did.[5]

Respondent suggests that the trial court could reasonably have concluded the electronics search condition would address future criminality by aiding the probation department in determining whether appellant was complying with two other conditions of probation, one prohibiting her from contacting the victims of her offenses or associating with her confederate in a prior offense, and the other prohibiting her from using or possessing controlled substances, alcohol or marijuana. Respondent notes that appellant's attorney acknowledged appellant was found with marijuana during a law enforcement search.[6]

But the record provides no basis for us to determine whether the electronic search condition was imposed based on these or other considerations, or imposed as a matter of routine, without consideration of appellant's circumstances. The court did not articulate any reason for imposing the electronic search condition. An electronic search condition had not been included in prior probation orders that appear in the record, was not recommended in the probation reports and was not included in the court's minutes for the

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[5] At the jurisdiction hearing, asked on cross examination why she did not call the police while she was at the mall, appellant responded, "I did not have a phone." She testified that her aunt had said to meet her across the street "where the gas station was" when appellant and her friend were done shopping, but she was not sure which street or which gas station because she was "not familiar with Stanislaus County because I'm not from here," and her aunt had not shown her the gas station at which they were to meet. Asked how she planned to meet her aunt, appellant indicated they were going to use the friend's phone to call her aunt.

At the end of the jurisdiction hearing, in explaining why it found appellant's description of the incident was "not credible," one of the points the court noted was that it seemed unreasonable "that two young girls would be meeting an aunt at a gas station across the street from the mall late a[t] night without any sort of phone service or without any sort of arrangements." Appellant protested: "I said I did have a phone. My friend had a phone, so I don't understand why you saying I didn't have a phone."

[6] Counsel's summary of the factual and procedural history of the case in his "Proposed Disposition" noted that marijuana was found in a search upon appellant's January 14, 2015 arrest.

disposition hearing or the written order of probation. The court pronounced the probation conditions after being reminded to do so by the prosecutor and discussing with counsel whether this should be done at disposition or subsequently, when a specific placement decision was made, explaining to appellant that the court was "fumbling over this" because it was "new to this courtroom and making disposition orders." There was no discussion of any of the conditions; they were simply stated by the court with a reminder from the prosecutor about one the court had not included.

Further, the condition was imposed without any specification of parameters for the search it authorized. As stated by the court—"any electronic or digital device in your possession or under your custody or control may be searched at any time of the day or night, by any peace or probation officer"—the condition was more limited than those in many of the cases we have discussed, as it did not expressly require appellant to provide passwords to law enforcement officers or authorize searches of internet sites potentially accessed through the devices. But a requirement to provide passwords to electronic devices can fairly be inferred from the search condition, as necessary for access to search the devices, and the condition imposed no limit on the extent of the authorized search. As has been observed, electronic devices may contain "a broad array of private information" (*Riley, supra,*134 S.Ct. at p. 2491); some of this information, such as that related to medical care or banking, clearly would fall outside the reach of a legitimate probation search. The condition as currently framed, therefore, is overbroad.

Appellant was unquestionably in need of close supervision. She has a history of criminal offenses, some involving physical violence, and of failing to appear for court hearings. She lied to the police in the current incident, giving a false name. However, given the record before us, determining whether these and other factors make an electronic search condition appropriate in this case and, if so, the appropriate scope of such a condition, would require speculation about how the condition may relate to appellant's circumstances and future criminality. For this reason, we will strike the condition as presently framed and leave it to the trial court to determine whether the

condition should be reimposed with appropriate tailoring to the circumstances of appellant's case.

II.

Appellant additionally contends the trial court erred in failing to specify her maximum term of confinement. Respondent agrees.

Under Welfare and Institutions Code section 726, subdivision (d)(1), "[i]f the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court." As the trial court did not specify appellant's maximum term of confinement, the matter must be remanded for this determination.

DISPOSITION

The electronic search condition orally stated by the trial court is stricken.

The matter is remanded to the trial court to determine and specify the maximum period of confinement pursuant to Welfare and Institutions Code section 726, subdivision (d). In all other respects, the orders are affirmed.

_____
Kline, P.J.

We concur:

_____
Richman, J.

_____
Miller, J.

In re S.M. (A147762)